

California Regional Water Quality Control Board  
Santa Ana Region

August 13, 2004

ITEM: 12

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Kurt and Mary Johnson, 13537 Mesa Verde Drive, Yucaipa, Riverside County, APN 322-831-25

DISCUSSION:

On July 8, 2004, Architect Michael Hummel contacted staff on behalf of Mr. and Mrs. Johnson requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. and Mrs. Johnson reside in a 3-bedroom, 2-bath house located at the site. Domestic waste from the residence is discharged to an existing subsurface disposal system. Mr. and Mrs. Johnson propose to construct a second dwelling unit on the lot and to install a separate 750-gallon septic tank-subsurface disposal system to serve this home. The property is just under one-half acre in size (20,824-sq. ft. or 0.47 acre net). This area of the County is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of domestic wastes. The site is located outside the Yucaipa/Calimesa Subsurface Leaching-Percolation System Prohibition area.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal system use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments. Mr. and Mrs. Johnson's residence was constructed prior to the minimum lot size requirements. Consequently, the use of the existing septic tank-subsurface disposal system has been exempt from the minimum one-half acre requirement.

In adopting the MLSRs, the Board also recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's MLSRs addressed these circumstances. Additions to existing dwellings (bedrooms/baths) are exempt from the MLSRs, if the existing septic system could accommodate the resultant additional wastewater flows. However, the MLSRs state that any proposal to add any freestanding structures that would result in additional wastewater flows must be considered a "new" development, to which the minimum lot size requirement applies. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property, which would result in substantial additional wastewater flows.

The Johnsons' proposed second dwelling unit would be a freestanding structure. As such, the project as a whole (the existing house and second home) must be considered a "new" development and the one-half acre minimum lot size requirement would apply. To satisfy the MLSRs, the existing house and proposed second home would each require one half-acre minimum lot size. Mr. and Mrs. Johnson's lot is under one-half acre in size. With a density of 0.235 acres per dwelling unit, Mr. and Mrs. Johnson's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. and Mrs. Johnson's request for an exemption from the minimum lot size requirements.

It should also be noted that Mr. and Mrs. Johnson propose to install a greywater system to divert flows from their existing 1,000-gallon septic system. However, such a system would still not reduce the nitrate loading which will occur from the existing home as well as the proposed second dwelling unit.

#### RECOMMENDATION:

Deny Mr. and Mrs. Johnson's request for an exemption from the minimum lot size requirements for the use of a second septic system.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon  
Riverside County Department of Environmental Health – Sam Martinez/Greg Dellenbach  
Riverside County Department of Building and Safety – Jim Miller  
Riverside County Department of Planning – Mark Balys  
Michael Hummel, Architect  
Dorado & Dorado Construction – Nick Dorado